

Before the
Administrative Hearing Commission
State of Missouri



DEPARTMENT OF HEALTH AND SENIOR)
SERVICES, BUREAU OF EMERGENCY)
MEDICAL SERVICES,)

Petitioner,)

vs.)

GEORGE RHODES,)

Respondent.)

No. 14-0061 DH

DECISION

George Rhodes' emergency medical technician ("EMT") license is subject to discipline because he committed criminal offenses reasonably related to the qualifications, functions, or duties of his profession, and that involved moral turpitude.

Procedure

On January 15, 2014, the Department of Health and Senior Services' Bureau of Emergency Medical Services (the "Department") filed a complaint seeking to discipline Rhodes' EMT license. Rhodes was personally served with a copy of the complaint and our notice of complaint/notice of hearing on February 13, 2014. He did not file an answer or otherwise respond to the complaint.

On March 21, 2014, the Department filed a motion for summary decision. We notified Rhodes by letter dated March 25, 2014, that he should file any response to the Department's motion by April 8, 2014. Rhodes did not respond to the motion.

Under 1 CSR15-3.446(6)(A),¹ we may grant summary decision "if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts." Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.² By failing to respond to the motion for summary decision, Rhodes has failed to raise a genuine issue as to the facts established in the Department's motion.³

Moreover, because Rhodes did not answer or otherwise respond to the complaint as required by 1 CSR 15-3.380(1), we order that he is deemed to have admitted the facts pleaded in the complaint, to have waived any defenses thereto, and to have defaulted on any issues raised in the complaint.⁴ Accordingly, we base our findings of fact on the complaint and the admissible documents attached to the Department's motion: business records authenticated by a custodian of records affidavit and certified court documents from the criminal cases against Rhodes.

The following facts are undisputed.

Findings of Fact

1. Rhodes was licensed by the Department as an EMT-Basic on March 18, 2011. His license, which expires on March 31, 2016, is current and active, and was so at all relevant times.
2. On October 20, 2010, an indictment was filed against Rhodes in the Circuit Court of St. Louis County, Missouri, stating, in pertinent part:

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² 1 CSR 15-3.446(6)(B).

³ 1 CSR 15-3.446(6)(B).

⁴ 1 CSR 15-3.380(7)(A) and (C).

The Grand Jurors of the County of St. Louis, State of Missouri,
charge:

Count: 01 SEXUAL ASSAULT – CLASS C FELONY

That George L. Rhodes, in violation of Section 566.040, RSMo, committed the class C felony of sexual assault, punishable upon conviction under Sections 558.011 and 560.011, RSMo, in that on or about August 31st 2010, at Saint Louis County, in the County of St. Louis, State of Missouri, the defendant [George L. Rhodes] had sexual intercourse with M.G., knowing that he did so without the consent of M.G.

3. On or about August 14, 2013, a superseding indictment was filed against Rhodes in the Circuit Court of St. Louis County, which added the following charge to the original indictment:

COUNT: 02 DEVIATE SEXUAL ASSAULT – CLASS C FELONY

That George L. Rhodes, in violation of Section 566.070, RSMo, committed the class C felony of deviate sexual assault, punishable upon conviction under Sections 558.011 and 560.011, RSMo, in that on or about August 31st, 2010, in the County of St. Louis, State of Missouri, the defendant [George L. Rhodes] had deviate sexual intercourse with M.G., knowing that he did so without the consent of M.G.

4. On September 17, 2013, Rhodes entered *Alford* pleas in the Circuit Court of St. Louis County to the charges of sexual assault and deviate sexual assault. On November 22, 2013, he was sentenced to four years in the custody of the Department of Corrections for the charge of sexual assault, and to four years for the charge of deviate sexual assault, with the sentences to run concurrently.

Conclusions of Law

We have jurisdiction over this case. § 190.165.2.⁵ The Department has the burden of proving that Rhodes committed an act for which the law allows discipline.⁶ By failing to

⁵ Statutory references are to the RSMo Cum. Supp. 2013 unless otherwise indicated.

⁶ See *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

respond to the complaint or to the Department's motion, Rhodes is deemed to have admitted facts and that those facts authorize discipline. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.⁷ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Department's complaint alleges there is cause for discipline under § 190.165.2 and 19 CSR 30-40.365(2)(B). The statute states:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

* * *

(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

The regulation provides, in pertinent part:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit, or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit, or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

* * *

⁷ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]⁸

The Alford Pleas

The certified court records establish that Rhodes entered an *Alford* plea to two felonies. In an *Alford* plea, the defendant enters a plea of guilty, waives trial, and consents to punishment without admitting guilt.⁹ For purposes of discipline under § 190.165.2, Rhodes need not have admitted his guilt; the fact that he was adjudicated and found guilty is sufficient.

A final judgment in a criminal case occurs when a sentence is issued,¹⁰ and for his crimes, Rhodes was sentenced to two concurrent terms of four years' incarceration. *Alford* did not sanction the entry of an *Alford* plea without an underlying factual basis of guilt.¹¹ Rhodes' *Alford* pleas and subsequent sentencing are unchallenged evidence of his guilt as to both criminal offenses. We find Rhodes was finally adjudicated and found guilty of committing the crimes of sexual assault and deviate sexual assault, Class C felonies.

Offense Reasonably Related to Qualifications, Functions or Duties of an EMT-Basic

To establish cause for discipline under § 190.165.2 and 19 CSR 30-40.365(2)(B), a licensee's criminal offenses must be reasonably related to the qualifications, functions, or duties

⁸ 19 CSR 30-40.365(2)(B).

⁹ *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

¹⁰ *State v. Williams*, 871 S.W.2d 450, 452 (Mo. banc 1994); *State v. Famous*, 415 S.W.3d 759 (Mo.App. E.D. 2013); *State v. Paul*, 401 S.W.3d 591, 592 (Mo.App. W.D. 2013).

¹¹ *Watkins v. State Board of Registration for the Healing Arts*, 651 S.W.2d 582, 584 (Mo. App., W.D. 1983), citing *Tempo Trucking and Transfer Corp. v. Dickson*, 405 F.Supp 506 (E.D. N.Y.1975).

of his/her profession. “Reasonable relation” is a low threshold. To “relate” is to have a logical connection.¹²

The Department asserts Rhodes criminal offenses that were reasonably related to the qualifications, functions, or duties of an EMT-Basic as described in the National Standard Curriculum for such licensees published by the National Highway Traffic Safety Administration (“NHTSA”) and required by the Department pursuant to § 190.142.4(1) and 19 CSR 30-40.342(2)(C)2.A.¹³ Section 190.142.4(1) provides that all levels of EMTs may perform only that patient care which is consistent with the training, education, and experience of that particular EMT. Regulation 19 CSR 30-40.342(2)(C)2.A requires an applicant to certify to the EMS Bureau that they have successfully completed 100 hours of continuing education, 48 hours of which must cover all requirements of the EMT-Basic core continuing education curriculum.

An excerpt from the NHTSA’s National Standard Curriculum that the Board offered into evidence contains references to instruction about expressed and implied consent as it pertains to rendering treatment to patients, and notes, under the heading “assault/battery,” the unlawful touching of a patient without his/her consent or providing emergency care when the patient does not consent to treatment. However, this single reference does little to establish the qualifications, functions or duties of an EMT-Basic; we infer from it only that licensees are instructed to seek consent prior to attempting treatment. Nor do we find any enumeration of the qualifications, functions, or duties of an EMT-Basic in the “Comprehensive Emergency Medical Services Systems Act,” §§ 190.001 to 190.245.¹⁴

¹² MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

¹³ The Board’s brief cited this regulation as 19 CSR 30-40.342(2)(B)2.A., but it does not exist in the 3/31/10 version of the Code of State Regulations. We assume this was a typographical error.

¹⁴ Section 190.100(16) defines an EMT-Basic as “a person who has successfully completed a course of instruction in basic life support as prescribed by the department and is licensed by the department in accordance with standards prescribed by sections 190.001 to 190.245 and rules adopted by the department[.]” “Basic life support” is defined as “a basic level of care, as provided to the adult and pediatric patient as defined by national curricula, and any modifications to that curricula specified in rules adopted by the department[.]” Section 190.100(5). We can discern from this only that an EMT-Basic is trained to provide some level of emergency medical care.

We do find guidance in 19 CSR 30-40.365(2)(N), which authorizes the Department to file a disciplinary complaint against a licensee whose conduct or practice might be harmful or dangerous to the mental or physical health of a patient or the public. Although the Department does not allege Rhodes' conduct violated this regulation, it provides insight into the qualifications and duties of this profession. Without question, a licensee who commits the crimes of sexual assault and deviate sexual assault engages in conduct harmful and dangerous to the mental and physical health of members of the public, and thus violates a critically important duty of an EMT-Basic.

Moreover, the functions of an EMT-Basic, at minimum, require that he or she be trusted to administer emergency treatment to members of the public in a professional manner. In an emergency situation, the EMT-Basic is routinely called on to examine and treat patients, working alone or in cooperation with a team of emergency responders. Respect for personal boundaries, integrity, and sound judgment are essential qualifications inherent to this profession. Rhodes' crimes are antithetical to these qualifications.

We find Rhodes' crimes logically connected to the qualifications, functions, or duties of an EMT-Basic. The Department met its burden to show Rhodes committed criminal offenses reasonably related to his profession. Rhodes is subject to discipline under § 190.165.2 and 19 CSR 30-40.365(2)(B).

Criminal Offenses Involving Moral Turpitude

The Department further asserts that Rhodes is also subject to discipline under § 190.165.2 and 19 CSR 30-40.365(2)(B) because he committed criminal offenses involving moral turpitude. We agree.

Moral turpitude is defined as “an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the

accepted and customary rule of right and duty between man and man; everything ‘done contrary to justice, honesty, modesty, and good morals.’¹⁵ Our analysis of moral turpitude is guided by *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹⁶ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude. The court referred to three classifications of crimes:

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court noted that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁷

Rhodes was convicted of second degree rape under § 566.040,¹⁸ which provides:

1. A person commits the offense of rape in the second degree if he or she has sexual intercourse with another person knowing that he or she does so without that person's consent.
2. The offense of rape in the second degree is a class C felony.

Rhodes was also convicted of deviate sexual assault under § 566.070,¹⁹ which provides:

1. A person commits the offense of sodomy in the second degree if he or she has deviate sexual intercourse with another person knowing that he or she does so without that person's consent.
2. The offense of sodomy in the second degree is a class C felony.

¹⁵ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹⁶ 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹⁷ *Brehe*, 213 S.W.3d at 725.

¹⁸ In 2013, H.B. 215 transferred § 566.040 to § 566.031. There is no longer any statute data associated with § 566.040. At the time of Rhodes’ indictment in 2010, the offense was then called “sexual assault.”

¹⁹ H.B. 215 also transferred § 566.070 to § 566.061. There is no longer any statute data associated with § 566.070.

For purposes of Chapter 566, “sexual intercourse” is defined as “any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.”²⁰ “Deviate sexual intercourse” means “any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.”²¹

Rhodes’ felonies involved violent acts of baseness, vileness, and depravity that necessarily involved moral turpitude. We determine his crimes of second-degree sexual assault and deviant sexual assault are Category 1 crimes. The record establishes Rhodes is subject to discipline under § 190.165.2 and 19 CSR 30-40.365(2)(B) for committing crimes involving moral turpitude.

Summary

There is cause to discipline Rhodes’ EMT-Basic license under § 190.165.2 and 19 CSR 30-40.365(2)(B). We grant the Department’s motion for summary decision and cancel the hearing.

SO ORDERED on April 30, 2014.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner

²⁰ Section 566.010(4).

²¹ Section 566.010(1).